Honorable Samuel J. Steiner
Chapter 11
Hearing Date: November 12, 2010
Hearing Time: 9:30 a.m.
Hearing Place: Seattle, WA
Response Date: November 5, 2010

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re ADAM R. GROSSMAN, Debtor.	No. 10-19817-SJS REPLY TO DEBTOR'S OBJECTION TO MOTION FOR ORDER FOR DISGORGEMENT OF FEES

Jill Borodin ("Rabbi Borodin") hereby replies to Debtor's objection to Motion For Order For Disgorgement of Fees (the "Motion").

I. RABBI BORODIN HAS STANDING TO REQUEST THE DISGORGEMENT OF MS. TSAI'S FEES

The Debtor erroneously states that Rabbi Borodin, not being a creditor in this action, does not have standing to move this Court for an order for disgorgement of fees. Assuming, arguendo, that Rabbi Borodin is not a creditor in this action, as the soon-to-be ex-spouse of the Debtor, she has a pecuniary interest in the Debtor's estate, and is undisputedly a party in interest. As such, she has standing to request disgorgement of unlawfully disbursed estate

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funds. The Debtor has cited no authority supporting the claim that only a creditor has standing to request disgorgement of fees to the Debtor's bankruptcy estate. Moreover, Section 105(a) of the Bankruptcy Code allows this Court to address and rule on the issue of disgorgement of Ms. Tsai's fees sua sponte, and provides: "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." Therefore, this Court has authority to order the disgorgement of Ms. Tsai's fees.

II. THE PAYMENT OF MS. TSAI'S RETAINER WAS MADE WITH FUNDS THAT WERE PROPERTY OF THE ESTATE

The Debtor's claim that Ms. Tsai's retainer in the amount of $7,500 was made by Peter Hendrickson directly to Ms. Tsai is in direct conflict with the Debtor's sworn testimony at the Debtor's hearing required under Section 341 of the Bankruptcy Code (the "341 hearing"). Below are excerpts from the transcript of the 341 hearing:

> Courshon: I don't know if you've discussed this with your attorney, but in a Chapter 11 you are acting as a debtor-in-possession representing the bankruptcy estate and normally if you want to borrow money, you have to get court approval. You need to give notice to creditors and set a hearing. So you are saying you borrowed $25,000 without getting court approval after filing of the petition?
>
> Grossman: Right.
>
> Courshon: Who did you borrow that money from?
>
> Grossman: My friend
>
> Courshon: Who's your friend?

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Grossman: Steven J. LeBlanc

Courshon: On an unsecured basis?

Grossman: Yes

Courshon: What was the date you borrowed the money?

Grossman: Approximately two weeks ago

Courshon: Do you have any loan documentation?

Grossman: A promissory note, yeah.

Courshon: Could you provide a copy?

Grossman: Yes…

See Docket Entry No. 35; Exhibit A to Declaration of Ida Werner, pages 3-4.

TS: You have recently hired a new family lawyer, is that correct?

Grossman: Correct.

TS: Is that Emily Tsai?

Grossman: Yes

TS: Do you remember the date that you hired her? Was this post petition or pre-petition?

Grossman: Post

TS: Was it court approved?

Grossman: No

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Courshon: You'll probably need to, if you're going to hire her to represent you in legal proceedings with your wife, you'll probably need to have her employed as special counsel.

O'Conner: [inaudible] do that one, too.

Courshon: Ok, you could do that one too.

O'Conner: I have some questions to ask you about that, but we can do that after.

Courshon: Right, we can do that after the meeting, sure.

TS: Can you tell me the date she was hired?

Grossman: Um [long pause], let me just think, I think it was approximately the 12th –[inaudible] I signed on the 15th ; she signed on the 16th.

TS: August or September?

Grossman: September, yeah, she signed on the 16th, so I guess that makes the contract executed on the 16th.

TS: Did you pay her a retainer?

Grossman: I did.

TS: What amount?

Grossman: Um, $7,500. That was part of the 25,000 loan.

TS: How was this funded?

Grossman: That was part of the $25,000 loan.

TS: Ok. Have you paid her since then? Since the retainer?

Grossman: $7,500…

See Docket Entry No. 35; Exhibit A to Declaration of Ida Werner, page 28-30.

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In sum, despite the Debtor's sworn testimony that he had borrowed $25,000 from Steven LeBlanc and had used a portion of that loan to pay Ms. Tsai's retainer, he now claims that the retainer was paid with funds that were not property of the estate, rather, a direct payment by a third party directly to Ms. Tsai on "no strings attached" basis.

For these reasons, the Court should grant Rabbi Borodin's motion requesting disgorgement of fees paid to Ms. Tsai by the Debtor.

DATED this 9th day of November, 2010.

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By *___________/s/Tereza Simonyan__________*
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